

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

KESEY D. FRANK §
v. § CIVIL ACTION NO. 6:14cv388
JOHN RUPERT, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Kesey Frank, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

This lawsuit was originally filed by 38 inmates and was severed into its component parts, creating one new case for each plaintiff. The order of severance directed each of the plaintiffs, including Frank, to file an amended complaint and to pay the filing fee or to seek leave to proceed *in forma pauperis*. When Frank did not comply with this order, the Magistrate Judge issued a Report recommending that this lawsuit be dismissed without prejudice for failure to prosecute or to obey an order of the Court.

A copy of this Report was sent to Frank at his last known address, return receipt requested, but no objections have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 3) is hereby **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute or to obey an order of the Court. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby **DENIED**.

It is SO ORDERED.

SIGNED this 8th day of September, 2014.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE